

## **State of New Mexico Model Domestic Violence and the Workplace Policy**

### **Policy Statement**

The State of New Mexico is committed to promoting the health and safety of its employees. Domestic violence, sexual assault and stalking permeates the lives and compromises the safety of thousands of New Mexico State employees each day, with tragic, destructive, and sometimes fatal results. Domestic violence occurs within a wide spectrum of relationships, including spouses, former spouses, current or former family members, co-parents of a child or between individuals who have or have had a dating or intimate relationship. Sexual assault and stalking may occur within any of those same relationships or may be perpetrated by an individual who has no direct relationship with the victim.

In addition to exacting a tremendous toll on the individuals it directly affects, the effects of domestic violence, sexual assault and stalking often spill over into the workplace, compromising the safety of both victims and co-workers and resulting in lost productivity, increased health care costs, increased absenteeism, and increased employee turnover.

The purpose of this Model Policy is to identify and prescribe agency practices that will promote safety in the workplace and respond effectively to the needs of victims of domestic violence, sexual assault and stalking. Agencies will use this Model Policy to develop their own agency-specific policies to achieve these objectives.

Therefore, Agencies, pursuant to Executive Order 2008-047 shall to the fullest extent possible without violating any existing rules, regulations, statutory requirements, contractual obligations or collective bargaining agreements, designate and direct appropriate management, supervisory, and/or human resources staff to implement Agency-Specific policies that include the following:

### **Definitions**

For purposes of this policy, the following terms will be defined as.

**Domestic Violence:** A pattern of coercive behavior that is used by a person against a household member, as defined in NMSA 30-3-11(A), to gain power and control over the other household member in the relationship. This behavior may include any of the following: physical violence, sexual abuse, emotional and psychological intimidation, verbal abuse and threats, stalking, isolation from friends and family, economic control, and destruction of personal property.

**Batterer, Perpetrator, or Abuser:** An individual who commits domestic violence, sexual assault, or stalking.

**Survivor or Victim:** An individual subjected to domestic violence, sexual assault, or stalking.

**Sexual assault:** An act of sexual violence whereby a party forces, coerces, or manipulates another to participate in sexual activity. This behavior may include rape, attempted rape, child sexual assault, attempted child sexual assault, criminal sexual contact, exposure, and voyeurism.

**Stalking:** Purposely pursuing a pattern of conduct directed at a specific person when the individual knows or should know that the pattern of conduct would cause a reasonable person to fear for his or her safety or the safety of a household member. The “pattern of conduct” means two or more acts, including, but not limited to, acts in which the individual directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person’s property.

**Domestic Violence Response Team/Responder:** Designated employees, with specialized training to handle disclosures, referrals, and office safety planning and with management or supervisory responsibility, are Responders. *See attached list of current Agency Responders.*

**Designated Family Member:** a victim who is the employee’s minor child or an incapacitated adult, where the employee is the guardian of the incapacitated adult.

**Workplace:** An employee is considered to be in the workplace when the employee is conducting State business, is using State resources or equipment, is using a vehicle that is owned or leased by the State or its agencies or is attending work-related events or traveling on work related business.

**Workplace Safety Plan:** A strategy developed in collaboration with a victim or survivor to implement workplace safety options.

## **Guidelines**

### **I. Employee Awareness**

Agencies shall increase awareness of domestic violence and inform employees of available sources of assistance.

- a. Agency shall include information on domestic violence, sexual assault and stalking awareness and services in written materials provided to new employees and as part of new employee orientation.
- b. Agency shall integrate information on domestic violence, sexual assault and stalking and the agency’s workplace policy into existing materials and literature, policies, protocols, and procedures, as appropriate.

- c. Agency shall maintain, publish and post in locations of high visibility such as bulletin boards, break rooms and online sources, a statewide list, created by the Department of Children Youth and Families (CYFD), with contact information for counseling, advocacy and referral resources of victims of domestic violence, sexual assault and stalking, as well as counseling resources for perpetrators. Additional referrals may be made to best meet the needs of the employee.

## **II. Non-Discriminatory and Responsive Personnel Policies for Victimized Employees**

Agencies shall ensure that policies and procedures do not discriminate against victims of domestic violence, sexual assault and stalking, and are responsive to the needs of victims of these offenses.

- a. The Agency, upon request, will assist the employee in identifying available leave options, including any discretionary leave available to Agency when an employee needs to be absent to:
  - 1. obtain or attempt to obtain any judicial relief, including, but not limited to an order of protection;
  - 2. meet with law enforcement officials, consult with attorneys, and/or victim advocates, and attend court proceedings related to the domestic abuse or sexual assault;
  - 3. seek treatment by a health care provider for physical or mental injuries caused by domestic abuse or sexual assault or to attend to such health care treatment for a victim who is a designated family member;
  - 4. obtain or assist a designated family member, in obtaining services from a domestic violence shelter, domestic violence program, rape crisis center, or other social services program for relief from domestic abuse or sexual assault
  - 5. Obtain or assist a designated family member, in obtaining mental health counseling related to an experience of domestic abuse or sexual assault; or
  - 6. Participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's minor children from future domestic abuse or sexual assault
- b. If Agency has a requirement of documentation in order to grant leave, Agency should be aware that victims of domestic violence might lack documentation or have difficulty obtaining documentation to justify absences without compromising their safety. Therefore, Agencies should consult with the employee to identify what documentation she/he might have, or be able to obtain, which will not compromise his/her safety-related needs and will

satisfactorily meet Agency's leave documentation requirement. Because there are confidentiality issues associated with the submission of documentation in these instances, Agencies should consult with the State Personnel Office (SPO).

- c. The Agency should prohibit inquiries about a job applicant's current or past domestic violence, sexual assault or stalking victimization, and prohibit employment decisions to be based solely on the applicant's status as a victim.

### **III. Workplace Safety Plans**

- a. Agency shall take steps to comply with all known court orders of protection, particularly orders in which abusers have been ordered to stay away from the work site. If requested by the victim of domestic violence or law enforcement, the Agency shall provide information in its possession concerning an alleged violation of an order of protection.
- b. Agencies shall incorporate responses to domestic violence, sexual assault and stalking into Agency's workplace safety response.
- c. Agency shall discuss with the victim of domestic violence, sexual assault or stalking the Agency confidentiality policy and the limitations thereto.
- d. Agencies shall provide reasonable means to assist victimized employees in developing and implementing individualized workplace safety plans. Plans must address additional concerns if the victim and the offender are both employed by the same agency.
- e. Agency shall review the workplace policy annually.

### **IV. Accountability for Employees Who Are Offenders**

Agencies shall hold accountable employees who engage in the following behavior: (1) using state resources to commit an act of domestic violence, sexual assault or stalking; (2) committing an act of domestic violence, sexual assault or stalking from or at the workplace or from any other location while on official state business; or (3) using their job-related authority and/or state resources to assist perpetrators in locating a victim and/or in perpetrating an act of domestic violence, sexual assault or stalking.

1. In cases in which an Agency has found that an employee has threatened, harassed, or abused an individual while in the workplace using state resources such as work time, workplace telephones, FAX machines, mail, e-mail or other means, said employee shall be subject to corrective or disciplinary action in accordance with existing collective bargaining unit agreements, statutes, regulations and Agency policy.
2. In cases in which an Agency has verification that an employee is responsible for a domestic violence, sexual assault or stalking related offense, or is the subject of any order of protection, including temporary, final or out-of-state order, as a result of domestic violence, sexual assault or stalking and said employee has job functions that include the authority to take actions that directly impact victims of domestic violence, sexual assault or stalking and/or actions that may protect

abusers from appropriate consequences for their behavior, the agency shall determine if corrective action is warranted, in accordance with existing collective bargaining unit agreements, statutes, regulations and agency policy.

3. In cases in which any employee intentionally uses his/her job-related authority and/or intentionally uses state resources in order to perpetrate domestic violence, sexual assault or stalking, assist an abuser in locating a victim, assist an abuser in perpetrating acts of domestic violence, sexual assault or stalking, or protect an abuser from appropriate consequences for his behavior, said employee shall be subject to corrective or disciplinary action, in accordance with existing collective bargaining unit agreements, statutes, regulations and Agency policy.
4. The Agency encourages employees who are perpetrators to voluntarily seek assistance from any entity on the community service provider list.
5. If an employee discloses that he or she is or has been a perpetrator of domestic violence, the responder should refer the employee to a CYFD approved Batterer's Intervention Program.
6. Agency employees who witness threats or incidents of domestic violence, sexual assault or stalking in the workplace, shall immediately notify a member of the Response Team or site security personnel. The employee shall not confront the perpetrator directly. Instead, the Responder will discuss the issue with the Response Team who will decide how best to address the situation.

#### **V. Firearms** *(Note: only for applicable agencies)*

Pursuant to federal law, a person convicted of a domestic violence-related crime or subject to an order of protection, under certain circumstances, forfeits the right to legally possess a firearm or long gun. Additionally, federal law contains prohibitions relating to shipping, transportation, or receiving firearms or ammunition.

- a. In addition to complying with the law, employees who are authorized to carry a firearm as part of their job responsibilities are required to notify the Agency if they are arrested on a domestic violence-related offense and/or served with an order of protection. Under certain circumstances, such employees are responsible for surrendering their firearms to the issuing agency or to the appropriate police agency.
- b. Should an employee fail to comply with the requirements set forth in V. a., said employee shall be subject to corrective or disciplinary action, in accordance with existing collective bargaining unit agreements, statute, regulations or Agency policy. In addition, the appropriate law enforcement agency shall be notified for possible criminal action.

#### **VI. Training**

- a. The Agency Specific policy will be distributed to all current employees. New employees will receive the policy upon commencing employment. All employees are expected to become familiar with this policy and to attend domestic violence,

sexual assault and stalking training as provided by the Agency. The policy should also be posted on the Agency's website.

- b. All managers, supervisors, and members of the Agency's Domestic Violence Response Team shall complete the Domestic Violence, Sexual Assault and Stalking in the Workplace Prevention Training developed by the New Mexico Domestic Violence Leadership Commission and provided by Agency. Training shall focus on domestic violence, sexual assault and stalking awareness, workplace security and safety planning, the need for confidentiality and record keeping, conducting appropriate investigations and appropriate referrals. Training will also include information on the ways in which domestic violence, sexual assault and stalking impacts the workplace, including the potential impact on worker productivity and the safety risks to on-site personnel and visitors.
- c. Training on domestic violence, sexual assault and stalking and its impact on the workplace should be made available upon the hiring of new personnel and agency-wide at least every two years. When possible, the Domestic Violence, Sexual Assault and Stalking in the Workplace Prevention Training and delivery program developed by the New Mexico Domestic Violence Leadership Commission should be integrated into existing Agency training programs.

## **VII. Agency Responsibility**

- a. The Agency shall set a tone communicating that domestic violence, sexual assault and stalking is behavior that will not be tolerated and that the Agency will actively provide information and support to employees who are victims of such abuse.
- b. The Agency shall, consistent with applicable law and Agency policy, document all incidents of domestic violence, sexual assault and stalking that happen in the workplace. Such documents shall be kept confidential to the extent permitted by law and agency policy and the provisions of section e detailed below.
- c. All Domestic Violence Response Team/Responders providing domestic violence information and support services shall document, consistent with applicable law and Agency policy, the number of employees who report domestic violence, sexual assault and stalking, the number of employees that request information/services, and the number of referrals made to service providers. All information about employees who seek assistance shall be kept confidential to the extent permitted by law and agency policy and the provisions of section e detailed below, and documentation should not include any personally identifying information. Aggregate data on the number of employees seeking assistance as outlined above shall be reported to the State Personnel Office (SPO) on an annual basis.
- d. Agency shall, consistent with applicable law and Agency policy, provide aggregate data about the number and general nature of domestic violence, sexual

assault and stalking incidents that happen in the workplace, the number of employees who report these incidents, the number of employees that request information/services, and the number of referrals made to service providers, with no personally identifying information, to SPO at the time and in a manner determined by SPO.

- e. Information related to an employee being a victim shall be kept confidential, to the extent permitted by law and Agency policy, and shall not be divulged without the written consent of the victimized employee, unless the Agency determines that maintaining said confidentiality puts the victim or other employees at risk of physical harm, is required by law, or is deemed necessary to enforce an order of protection. In such circumstances where a determination has been made that maintaining confidentiality puts the victim or other employees at risk of physical harm, only those individuals (Agency employees and/or safety and security personnel and/or rescue and first aid personnel) as deemed necessary by the agency to protect the safety of the victim and/or other employees or to enforce an order of protection shall be given such information. The Agency shall disclose only the minimum amount of information necessary to protect the safety of the victim and/or other employees or enforce an order of protection. Where possible, an Agency should provide to the victim with notice of the intent to provide information to other employees and/or safety personnel. It is important for an Agency to inform a victim of domestic violence of the Agency policy of confidentiality toward domestic violence information and the limitations of that policy. Nothing herein shall prevent an Agency from investigating an act or acts of domestic violence that happen within the workplace. The Agency shall provide examples of situations where confidentiality cannot be maintained such as the following:
  - 1. Supervisors/managers may be informed about a domestic violence, sexual assault or stalking incident that happens in the workplace, or a report of domestic violence, sexual assault or stalking if it is necessary to protect the safety of the employee or the employee's co-workers.
  - 2. First aid and safety personnel may be informed about a domestic violence, sexual assault or stalking incident that happens in the workplace or a report of domestic violence, sexual assault or stalking if it is necessary to protect the safety of the employee or the employee's co-workers.
  - 3. Agency or law enforcement investigating a domestic violence, sexual assault or stalking incident that happens in the workplace, or a report of domestic violence, sexual assault or stalking shall be provided relevant information on request.
- f. All Agencies should establish a clear statement informing staff providing services and victims of applicable confidentiality limitations that exist.